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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,275	04/15/1999	ROY J. MANKOVITZ	088245-3275	3332

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EXAMINER
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SALTARELLI, DOMINIC D

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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06/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/292,275</p>	<p><b>Applicant(s)</b> MANKOVITZ, ROY J.</p>	
	<p><b>Examiner</b> DOMINIC D. SALTARELLI</p>	<p><b>Art Unit</b> 2623</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 78-82,92-110,117-130,132-137,160 and 161.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2623

Continuation of 11. does NOT place the application in condition for allowance because: First, applicant argues that the combination of Palmer and Kiefl does not teach storing time of day information corresponding to a time at which a request for supplemental content is received because Palmer does not teach a clock tracking time of day information and Kiefl does not teach receiving requests for supplemental content (applicant's remarks' pages 8-9). As stated previously, one cannot show nonobviousness by attacking references individually where the rejection is based upon a combination of references. Palmer teaches tracking specifically when a user makes a request for supplemental content, but suffers from requiring special equipment to both insert and subsequently read the codes used for content retrieval. Kiefl solves this problem by tracking interactions by simply time-stamping them, freeing the Palmer system from reliance upon special code reading equipment tied to the television. Pointing to the nuances of the Kiefl system in the manner in which it is implemented as a stand alone system with the intent of tracking watched channels and ignoring channel surfing behavior does not address the combination of Palmer and Kiefl as proposed by the examiner.

Second, applicant argues that Goldstein does not disclose "supplemental information about a broadcast" as claimed, pointing out that the content displayed on Goldstein's hand held device are advertisements for future programming (applicant's remarks, page 10). Once again, the examiner must point out that one cannot show nonobviousness by attacking references individually where the rejection is based upon a combination of references. The primary reference, Palmer, established the fact that the supplemental content being downloaded to a user's premises is supplemental content about a program. Goldstein is introduced merely to show that it was known to use a portable hand held device with a display portion to showcase content downloaded to a user's premises.

Third, applicant argues that the Kiefl reference teaches away from a combination with Palmer, because Kiefl includes an embodiment where certain interactions are ignored if they are too brief, and the sort of interaction required by Palmer is a brief one (applicant's remarks, pages 1-12). However, this is only relevant to a system which is designed with the intention of tracking viewing history of channels and thus finds it desirable to ignore channel surfing behavior. However, since the system in question is designed with the intention of tracking the time a button is pressed rather than being concerned with audience attention spans (as taught by Palmer), including this feature of Kiefl's would not occur to a practitioner of ordinary skill in the art when modifying Palmer in view of Kiefl. So, simply because it is disclosed by Kiefl does not automatically mean it must be included in the combination, it merely needs to be considered.

Lastly, applicant argues that the combination of Kiefl and Goldstein relies upon impermissible hindsight to arrive at the claimed invention, because Kiefl's personal data meters are disclosed as being separate from the remote control. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the combination of Palmer and Kiefl results in personal data monitors that track user requests from supplemental content, and report this data back to a computer which retrieves the content and sends it down to the user's console through a telephone line (Palmer, fig. 2, phone line 49). Goldstein's hand held device incorporates a telephone line for communications with a remote computer (Goldstein, fig. 1A, telephone line 32), and so the combination would result in the personal data monitor being incorporated into the remote control itself. Thus the combination does not rely upon any teachings which are not gleaned directly from the references themselves..